



## **Oregon OSHA**

### **OSHSPA State Plan Report February, 2021**

**Michael Wood, Administrator**

#### **I. Significant Legislative/Programmatic Changes**

**Legislatively Mandated Rulemaking:** None at this time.

**Legislative Activity:** None at this time.

#### **Other Rulemaking Activity:**

[Temporary Rule Addressing the COVID-19 emergency in employer- provided housing, labor intensive agricultural operations, and agricultural transportation.](#) In response to the current COVID-19 crisis, an emergency rule was adopted on April 28, 2020 and took effect May 11, 2020. The emergency rules covered field sanitation for labor-intensive work, agricultural housing, and the transportation of workers related to the labor-intensive work. The emergency rules were to remain in effect until October 24, 2020. On October 23, 2020 Governor Brown issued an Executive Order (20-58) extending the requirements of employer-provided housing (Section 2) of the Temporary Rule. Labor-intensive agricultural operation (Section 1) and agricultural transportation (Section 3) of the temporary rule expired on October 24, 2020 and are no longer in effect.

[Temporary Rule Addressing the COVID-19 Workplace Risks.](#) In response to the current COVID-19 public health crisis, an emergency rule was adopted on November 6, 2020 and was effective November 16, 2020. The rule specifies three categories of workplaces: 1) All Workplaces, 2) Employers with More than 10 Employees Statewide, and 3) Exceptional Risk Workplaces. The rule requires social distancing, facial coverings, ventilation maintenance, risk assessments and infection control plans, employee training, infection notification, and testing protocols, among other conditions specific to particular workplace environments. The temporary rule expires on May 4, 2021.

[COVID-19 Permanent Rulemaking](#). As a result of both the immediate and long-term risks highlighted by the current public and occupational health crisis, Oregon OSHA is working to adopt a permanent COVID-19 infectious disease rule to replace the temporary rule. Oregon OSHA is relying upon as much collaboration and consultation with experts and with stakeholders as the timeframe and other circumstances allow. With the permanent rule, Oregon OSHA has empaneled two rulemaking advisory committees (RAC) for General Workforce and Exceptional Risk workplaces. Additional outreach includes employing targeted virtual forums and circulation of preproposal drafts to gain stakeholder feedback. Advisory Committees began meeting in November 2020 and will continue meeting through January 2021. OSHA expects to propose a permanent rule in February 2021 for public comment.

**Employer Responsibilities.** Oregon OSHA proposed language in February 2020 to address the issue of employer knowledge and the role of reasonable diligence in determining whether an employer has “constructive knowledge” of a violation in the worksite. The public hearings were postponed due to COVID-19. Virtual hearings took place in September and October 2020. Final filing will occur in 2021.

**Permissible Exposure Limits (PELs).** In March 2017, Oregon OSHA selected lead and manganese from the PEL advisory group’s list of suggested candidates as the first two of approximately four to six candidates to undergo a PEL reduction through the rulemaking process. These substances were selected because of their broad exposure to workers in Oregon across a wide range of industries. Both lead and manganese rulemakings have formed separate advisory committees who are meeting and beginning the rulemaking process.

**Lead-** Oregon OSHA’s lead rulemaking stakeholder meetings will continue, and potential rule language is being drafted. Oregon OSHA is working with WA-DOSH in this rulemaking as they are addressing the same issue at the same time. The rules may be different, but stakeholders and technical specialists involved are going to both Oregon and Washington rulemakings. It is expected that meetings may resume in 2021.

**Manganese-** Oregon OSHA proposed language in January and accepted public comment through May 4, 2020. The decision to adopt the proposal has been made and OR OSHA is in the process of resolving comments and proceeding with final rule filing.

**Excessive Heat and Outdoor Smoke.** On March 10, 2020, Governor Brown issued [Executive Order 20-04 \(EO 20-04\)](#) that provides directives to certain state agencies in an effort to reduce greenhouse gas emissions (GHGs) and mitigate the impacts of climate change. EO 20-04 includes a directive to the Oregon Health Authority (OHA) and Oregon OSHA to jointly develop a proposal for standards to protect employees from workplace exposures to excessive heat and wildfire smoke. In response to EO 20-04, Oregon OSHA, in collaboration with the OHA, advisory committees, and stakeholders, will work towards developing two separate proposed standards: Preventing Outdoor Heat-related Illness and Protection from Unhealthy Levels of Wildfire Smoke.

**Penalties.** Oregon OSHA reviews its penalty rules yearly to determine compliance with federal penalties and determine if Oregon OSHA's penalties are as effective or more effective than the federal penalty amounts. In 2020, Oregon OSHA proposed new rules to increase penalty amounts to better align the agency with federal OSHA. The public hearings were postponed due to COVID-19. Virtual hearings took place in September and October 2020. Final filing will occur in 2021.

**Cranes and Derricks in Construction: Railroad Roadway Work.** Oregon OSHA is conducting this rulemaking in response to a federal OSHA rule adoption on September 15, 2020. That rule revised the standard for cranes and derricks in construction to provide specific exemptions and clarifications for cranes and derricks used in railway roadway work. Rulemaking will proceed in 2021 to align with federal standards.

**Agricultural Labor Housing.** Oregon OSHA has begun the process of consulting stakeholders regarding updating and improving rules around agricultural labor housing (ALH). Oregon OSHA has put together a stakeholder group consisting of the small agricultural employer advisory committee, as well as members of other interested parties, including worker advocates. The ALH advisory committee had their first meeting in November 2018, and plan to reconvene and continue work in 2021.

**Non-Structural, Non-Wildland Firefighting.** During the 2019 legislative session, state legislators began discussions with Oregon OSHA regarding rules for employers who have limited resources and may not have the level of equipment available as traditional firefighters because of the rural communities that they serve. The agency and stakeholders are looking to balance protections for these workers with the reality that these workers are often in rural areas, and work with fire suppression equipment that is donated and older than equipment contained in urban fire departments. Oregon OSHA began the rulemaking process by consulting a small stakeholder task force group in early 2019, and now the agency is consulting with stakeholders within the Fire Service Advisory Committee as well. A draft rule is under development. The non-entry firefighting stakeholders have met multiple times in 2019, and continue to bring draft language and suggestions to the fire services advisory committee. These groups will begin to meet again in 2021 before proposing potential rule changes.

*All adopted and proposed rules are available at our website <http://www.osha.oregon.gov>  
- look under Rules and Laws.*

## **II. New Developments/Activities/Notable Cases Activities:**

**New Publication:** Oregon OSHA published eight new or revised publications since the Oregon OSHA, OSHSPA September 2020 report.

Provisions with Delayed Effective Dates for Oregon OSHA's COVID-19 Temporary Rule for All Workplaces, fact sheet, English and Spanish versions, 12/4/20

COVID-19 Temporary Rule for All Workplaces, fact sheet, English and Spanish versions  
11/24/20

COVID-19 Hazards Poster, English and Spanish versions 11/6/20

COVID-19 Temporary rules regarding field sanitation, housing, and transportation related to agriculture, fact sheet, English, 10/26/20

Fall protection for construction activities, Brochure, English, 8/31/20

**Oregon OSHA News Releases:** Oregon OSHA published eleven news releases since the OSHSPA September 2020 report.

12/22/2020 [Employers Must Not Retaliate Against Employees Who Need To Quarantine](#), English version

12/18/2020 [Contest promoting young worker safety in Oregon opens with new theme, tagline, media entries](#), English version

12/10/2020 [Oregon OSHA launches free online course addressing COVID-19 safety training](#), English and Spanish versions

12/01/2020 [Roseburg contractor fined \\$42,000 for continued job safety violations](#), English version

11/13/2020 [Oregon OSHA offers resources to help comply with temporary COVID-19 rule](#)  
English version

11/10/2020 [Oregon OSHA rolls out new bilingual job safety training resource](#), English and Spanish versions

11/09/2020 [Oregon OSHA adopts temporary rule addressing COVID-19 in all workplaces](#), English version

10/22/2020 [Roseburg contractor fined more than \\$38,000 for multiple job safety violations](#), English version

09/16/2020 [Oregon OSHA faults 2 employers for similar failures to protect workers against COVID-19](#), English version

09/11/2020, 9/15/20 [Employers urged to protect workers by avoiding outdoor work, following best practices as harmful air quality persists](#), English and Spanish versions

09/09/2020 [Workers' compensation costs to drop for eighth-straight year](#), English version

**Newsletters:** Oregon OSHA publishes two newsletters: The “Resource” (a general interest publication which includes construction) is published every two months, and the “Forest Activities News” (for the logging and forest industry) is an occasional newsletter from Oregon OSHA covering topics of interest to the logging and forest activities employers. These are available at <http://www.osha.oregon.gov>.

## **Notable Case: River Roofing**

**Business:** River Roofing is a mid-sized roofing contractor with 44 employees.

**When did it happen?** Aug. 4, 2020, at 6:58 a.m.

**Where did it happen?** At the new Caldera High School construction site in Bend.

**What happened?** A 37-year-old roofer died when he slid off a sloped roof and fell 45 feet after trying to stop an out-of-control trailer loaded with more than 900 pounds of roofing material.

### **Description of incident**

The victim was part of a five-person “cart crew” tasked with staging roofing material on a large section of the high school’s roof with a 200-pound “Little Giant” trailer.

Just before the crew started work, three of the employees were re-assigned to a project at another site; they were replaced with three other company employees – including the victim – who had never worked with the crew before.

The new crew started work just before 6 a.m. – about an hour earlier than their typical start time of 7 a.m. – because the day was expected to be hot. The crew had been starting early for the past week because of hot weather.

Typically, the crew began its work by loading the roof with material to be used that day. The work involved transporting large bundles of ridged insulation (weighing 305 pounds per bundle) and nail-base insulation (weighing 906 pounds per bundle) 109 feet up the north side of a 3:12 pitch roof, then over the roof's peak and 45 feet down the south side (also 3:12 pitch) to a staging area.

The crew was not able to load the bundles on the south side of the roof with a forklift so the workers used a telescopic handler to lift the bundles from the ground and placed them on the Little Giant trailer, which was positioned on the north side of the roof near the eave. The bundles overhung each side of the trailer by 33 inches.

One crew member was tasked with pulling and steering the loaded trailer (which weighed 1,106 pounds) by its handle up the 3:12-pitch roof to its peak while the other crew members pushed from behind.

As the crew reached the peak of the roof, the employee pulling the trailer did not have enough strength to raise the trailer's front wheels over an eight-inch high "transition" section of roofing material.

One of the employees who was pushing the trailer moved to the front to help lift the wheels over the transition. The entire crew then began rocking the trailer back and forth, attempting to roll it over the transition, but the effort suddenly launched the cart forward and over the peak.

The trailer began rolling down the south side of the roof as the two employees in front and the three in back tried to slow it down before it reached the eave 45 feet away. The first 16 feet were bare plywood, but the remaining 29 feet were covered with an ice-and-water barrier that was slippery because of early morning dew.

The two employees in front tried to steer the trailer, but the front wheels kept self-correcting and it continued to roll forward. The three employees in back were desperately trying to stop it, but their feet were sliding on the slippery ice-and-water barrier.

Two of the employees behind the trailer let go and the two employees in front rolled out of the way – but the victim continued to hold on from behind. The trailer plunged through an engineered guardrail system at the eave of the roof and the victim, who let go at the last moment, slid over the edge and fell about 45 feet to the ground. The surviving crew members were all less than 10 feet from the roof's edge. More than 50 feet of the engineered guardrail system was torn off the eave after the trailer struck it.

## Findings

**River Roofing did not use all reasonable means and methods to ensure that the cart crew were protected from hazards while they were using the Little Giant trailer on a 3:12 pitched roof.**

- The Little Giant operator’s manual stated, “For use on flat, level roofs only... Make certain roof edge material handling area is flat, level and clear of debris and obstacles...”
- A warning label on the trailer stated, “Warning: Serious injury may result if this product is misused.”
- When employees were asked if they thought the trailer was a hazard (because of the way they were using it) they said that the trailer was difficult and “sketchy” to use, but they did not bring it up in a safety meeting or mention it to a supervisor because they did not know of a better way to transport material on the roof.
- There was a crane on site, but it was not used to load roofing material on the south side of the roof because it was not large enough to reach the area; a larger crane was not considered because the trailer was useful in transporting roofing material.
- Management knew that the trailer was being used on the roof, but did not consider the possibility that it might roll off the roof. The company had used the same type of trailer for more than 20 years on both flat and pitched roofs.
- The cart crew foreman said that he talked to the victim about the trailer before he used it, but not about what to do in an out-of-control situation.
- The Little Giant operator’s manual was not used to train the cart crew. Although four members of the cart crew had considerable experience using the trailer, the victim was new to the crew and not as experienced.

*Side note:* There was not an eight-inch-high transition below the peak of the north side of the roof the day before the incident happened; consequently, the cart crew did not need to rock the trailer to move it up to the peak. The transition was located below the peak on the south side of the roof, which acted as a speed bump and allowed the cart crew to maintain control of the trailer as they rolled it down the south side.

## Violation

**One alleged violation and a Hazard Letter were issued as a result of this incident.**

- 437-001-0760(1)(b)(C) – Rules for all workplaces, Employers’ responsibilities. Penalty: \$3,600.
- Hazard Letter citing 437-003-2501(1)(c) – Protection from falling objects.

**Conference dates and locations can be found at:**

<http://osha.oregon.gov/conferences/Pages/index.aspx>

**Questions?** Contact the Conference Section at (503) 378-3272 *or* toll-free in Oregon at (888) 292-5247, option 1. *or* send email to: [oregon.conferences@state.or.us](mailto:oregon.conferences@state.or.us)

**III. Areas of Concern:** Nothing new to report.

**IV. Information Sought from Other State Programs:** Nothing new to report.

**V. Administrative Changes:** Nothing new to report.

**VI. Contact Information:** Phone: (503) 378-3272, Fax: (503) 947-7461, Internet: [www.osha.oregon.gov](http://www.osha.oregon.gov), Policy and Appeals Manager: Renee Stapleton, [Renee.M.Stapleton@oregon.gov](mailto:Renee.M.Stapleton@oregon.gov)